Police Discretion and Traffic Law Enforcement

Hayes Elder
COMMENT
POLICE DISCRETION AND TRAFFIC LAW ENFORCEMENT

We are constantly reminded that death and destruction in automobile accidents impose a continuing and increasing demand for laws that will save our citizens from themselves on the highways. It is undeniable that traffic safety is extremely important, and that the highway traffic toll is a cause for great public concern. It has been characterized as a problem of public health, having attained epidemic proportions. The following quotation indicates the magnitude of the problem:

Traffic deaths and injuries in the United States during the first two years of the Korean war were much greater than the American casualties at the front. There have been over three times as many deaths and twenty-five times as many injuries in traffic as there were on the battlefield. The accumulation of accidental deaths during little more than fifty years of use of automobiles has been over a million, which is greater than all the deaths from war in this country since 1776.

Although the annual traffic fatalities remained fairly constant at about 37,000 for nearly two decades, they passed 40,000 (40,900) for the first time in 1962. Moreover, for every fatality, there are more than 125 non-fatal injuries. The effect on young people is particularly severe: in a recent ten year period 42% of all deaths in the 13-25 age bracket were attributable to traffic accidents. It has been estimated that the direct economic cost of traffic accidents was $5.3 billions in a recent year. This is not our problem alone; it is a world-wide problem: World Health Organization statistics list more than 100,000 traffic deaths annually, reported from forty-seven member states. Stated more dramatically, "Every 14 hours—on the average—someone dies in Washington State traffic. Nearly 100 persons are injured each day.

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2 Beutel, Some Potentialities of Experimental Jurisprudence as a New Branch of Social Science 91 (1957).
6 Norman, Road Traffic Accidents—Epidemiology, Control and Prevention 19 (1962).
7 Id. at 9.
In 1962 alone, nearly 85,000 persons were injured by automobiles somewhere in the state.\textsuperscript{8} Traffic accidents take a life every ten to fifteen minutes, and they cost us $250 each second.\textsuperscript{9}

As dark as the picture is now, future prospects are even worse. Of thirty-one states that publish such statistics, seventeen reported an increase in traffic injuries of more than 100\% in the 1948-57 decade. Florida showed a 486\% increase. New York's actual injuries increased 125\% and the rate of injuries per one-hundred million traffic miles increased 44\%.\textsuperscript{10} The scene is set for the upward trend to continue. There were seventy-six million automobiles operating in 1961, and this figure is expected to swell to one-hundred and fourteen million in the next fifteen years.\textsuperscript{11}

But, society, in its desire to secure our future safety on the highways, must not be driven by these alarming statistics to sacrifice personal freedoms. Although the first concern with traffic safety laws is to increase the motorist's chance for survival, these traffic laws, and the enforcement of them, create other problems that can undermine values fundamental to our society. This comment will discuss some of these problems, and shall suggest a possible course for our legislative bodies that may best effect greater traffic safety, and at the same time preserve the other values. For the sake of comprehension and comprehensiveness, this discussion will be confined to traffic speed limits.

Speed limits are legislatively established and are often unreasonable. People refuse to obey unreasonable speed limits, and the police will not enforce them. However, the police do not permit motorists to select the safe speed: the police enforce what they believe is a safe and reasonable speed limit. When they do this they replace the legislature and the city councils as lawmakers.

Police lawmakers create, actually or potentially, several problems. It may breed disrespect and contempt for the law in the minds of many of our citizens. It may constitute the first step on a short path to a police state. Depending on its course and scope, it may violate the due process and/or equal protection provisions of the United States Constitution. It may produce important effects in the negligence per se area of tort law.

\textsuperscript{10} Moynihan, supra note 1, at 94.
\textsuperscript{11} National Safety Council, Accident Facts 40 (1962 ed.).
We shall seek to discover the extent to which these problems are real ones, what has been done about them, and what can be done about them. Because legislative bodies, enforcement agencies, governmental administrative units, judges, safety councils and automobile clubs, among others, devote much time and effort to these problems, they provide a realistic and useful source for investigation of traffic speed laws and their implications. Thus, many of the conclusions in this article were formed after extensive interviews from these “field sources.”

Legislatures, in fits of misdirected zeal inspired by the disclosure of grim statistics, such as those quoted at the outset, have frequently established speed limits that are unrealistically and unreasonably low. A well-known experience of the past decade demonstrates the inadvisability of “too-low” speed limits. A crusading Connecticut governor enforced a widely publicized “crackdown” on speeders. During the year before he ‘declared war on automobile speeding,’ Connecticut state police issued 372 speeding citations. In the first year of the program, 10,055 citations were issued. When all fines had been paid and all victims buried, statistics indicated that the chief result of the vigorous “traffic safety” campaign was to increase the Connecticut driver’s risk of death on the highways by 8% for every mile he traveled.

Drivers invariably refuse to obey unreasonable speed limits, and police officers will not, or cannot, enforce them. Regardless of the attitude of police authorities toward unreasonably low speed limits,

12 The author is grateful for the assistance rendered by the following persons, both in the granting of personal interviews and the furnishing of helpful reports and pamphlets: State Senator Nat Washington, Ephrata, chairman of the Washington State Legislature’s Interim Committee on Highways; Seattle City Council President Clarence Massart (who served as chairman of the Council’s Public Safety Committee when the revised 1963 Seattle Traffic Code was enacted); the Honorable Vernon Towne, Judge of the Municipal Traffic Court of Seattle; Lieutenant Ranney, Washington State Patrol, Olympia; Captain Ed Corning, Seattle Police Department; Mr. Rex Still, Traffic Engineer, Washington State Highway Commission; Mr. Myron Mitchell, Traffic Engineer, City of Seattle; Mr. Tom Darlington, executive director of the legislature’s interim committee on highways; Mr. Ray Norwood, manager Seattle-King County Safety Council; and Mr. Russell Van Rooy, assistant general manager of the Washington Automobile Club (American Automobile Association). Although many persons rendered invaluable assistance, the author assumes complete and undivided responsibility for all views expressed in this Comment.

13 For example, see REPORT, supra note 9, at 3, 5, and Schwartz, The Case for Fast Drivers, Harper’s, Sept. 1963, p. 65.

14 O’Connell, supra note 4, at 308.

15 Most drivers already drive “at speeds they consider safe for the highway and the prevailing driving conditions,” and almost universally ignore compulsory attempts to slow them down to an unreasonably low speed limit. Smith & Lecraw, Travel Speeds and Posted Speeds in Three States, 2 TRAFFIC Q. 101 (1948). “We know that 36% of the automobiles on state roads are always going faster than fifty miles per hour.” Moynihan, supra note 1, at 94.
restricted manpower prevents effective enforcement when a majority, or a large minority, of drivers, ignore the posted speeds. However, the police will not abandon the designation of speed limits to the whim of passing motorists; they will draw the line at some point—the point they believe to be both safe and enforceable. This exercise of police discretion to determine what the effective speed limit will be constitutes a police usurpation of a legislative function. It is undeniable that such police discretion is exercised. Necessity is the alleged justification.

If the necessity for police discretion exists, and that contention will be examined later, then the traffic safety benefits derived must be balanced against the other problems that accompany police discretion. The average motorist does not consult the statute book before setting out on the highway, but he becomes aware of the statutory command through the posted speed limit. He then discovers, from common observation, that the speed limit actually enforced by the police may be higher than that established by the legislature. The legislative law becomes meaningless; the motorist becomes concerned with “what he can get away with.” Disrespect for the law, bred in this manner, is a sure sign of ill health in a democratic society. Although motorists thus become “lawbreakers,” it is doubtful that they believe they are doing anything wrong, and they certainly cannot be categorized as revolutionaries. However, this observation does not lessen the problem, it merely emphasizes it. If, in breaking the law, citizens recognized that they were acting contrary to the law, its supremacy would remain unchallenged, even though occasionally unobeyed. Instead, the motorist does not recognize the legislative pronouncement as law at all, but regards the law as being that which issues from “the policeman’s night stick.”

It is not uncommon for an irate defendant to protest to a traffic judge that he has been wrongfully charged with a speeding violation because he was exceeding the posted limit by only X miles

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16 Corning, Towne, and Norwood, supra note 12. Mr. Norwood suggests that for optimum traffic enforcement in Seattle, the present 800 man police force should be virtually doubled.

17 E.g., engineering studies in Seattle reveal that prevailing speeds, i.e., the average, on arterial streets, consistently exceed the posted speed limits. Mitchell, supra note 12.


per hour, and "everybody knows that you can't get a ticket for doing that."\textsuperscript{21}

What is the significance of this disrespect for the law? Perhaps its effects do not extend beyond traffic laws; perhaps the motorist who learns today that speed limits are synonymous with police enforcement will not, for example, gear his income tax reporting to the rumored effectiveness, or lack thereof, of the revenue agents, but will report in compliance with the spirit, as well as the letter of the law. Some persons closely associated with the traffic safety movement suggest that this is the case. An American Automobile Association official suggested that a motorist is a different creature from that same person when he is not driving a car.\textsuperscript{22} He stated that people do not relate driving laws and driving experiences to other laws and to other experiences. If this is so, there may be no problem of disrespect for the law. If there is no carry-over into other fields of law, and if traffic safety enforcement can be best accomplished by allowing to the police a freer hand, the harm is probably minimal. However, it is not certain that there is no extension of the disrespect generated by the variance between traffic laws and traffic law enforcement into other areas of law. A Safety Council official suggests that there probably is such an extension.\textsuperscript{23} A traffic judge concedes that there is a possibility of such an extension.\textsuperscript{24}

Assuming that we wish to avoid general disrespect for the law, it would be hard to find an area of law that provides more opportunity to spread the pernicious disrespect than does that of speeding laws. First, it seems unlikely that there is any generic classification of laws that affects more citizens than do speeding laws. Virtually everyone beyond the early years of adolescence is a motorist.\textsuperscript{25} In contrast, if disrespect for the law were generated from some aspect of the administration of, for example, laws relating to corporate reorganizations, only a small fraction of the population would be affected. If there is a "spillover" of disrespect from enforcement of highway speed laws, there is scarcely a corner of the populace that would escape the deleterious influence. Second, traffic speed laws frequently provide young people with their first contact with the law, or even their first encounter with the concept of authority beyond the home and the school.\textsuperscript{26} It is undoubtedly to society's disadvantage if the ascending generation's first impression of

\textsuperscript{21} Towne, supra note 12.  
\textsuperscript{22} Van Rooy, supra note 12.  
\textsuperscript{23} Norwood, supra note 12.  
\textsuperscript{24} Towne, supra note 12.  
\textsuperscript{25} See note 12, supra, and accompanying text, and see, generally, O'Connell, supra note 4, Report, supra note 9 at 3, 5 and Schwartz, supra note 13.  
\textsuperscript{26} Judge Towne is particularly aware of this phenomenon. See note 12, supra.
law as a living concept produces in their minds an equation of law with police authority. The recently learned ideals of ordered liberty and of governments of laws rather than governments of men will be quickly forgotten. The ideals of Thomas Jefferson and James Madison will be thought of as mere romantic nonsense, and the real meaning of law will be symbolized for them by a uniformed motorcycle police officer.

If the disrespect for law bred in the enforcement of speed limits transcends that field of law, the dangers to the democratic system are apparent. The possibility that it does so transcend is great enough to warrant concern, and is sufficient to suggest the elimination of the source of disrespect: the exercise of police lawmaking.

"Police State" is a term of the greatest opprobrium and infamy to Americans. It is antithetical to our most fundamental precepts, and the Bill of Rights was designed to eliminate it from our working vocabulary. Yet, it still exists in today's world. The Supreme Court continues jealously to guard against its encroachment upon American lives.27 Substantial variation between enforced law and written law virtually defines a "police state." Selected sections of the East German constitution that are inscribed on the wall of a West Berlin memorial dramatically support this assertion. They purport to guarantee to all East Germans freedom of movement and the right to live in the locale of their choice, freedom of expression of opinions and of public congregation for that purpose, and freedom of election. Pictures surround these inscriptions: of tanks dispersing crowds who had congregated to express freely their opinions, and of East German police shooting, on the Berlin wall, an eighteen-year-old boy who sought to exercise his right to freedom of movement.

Perhaps permitting the police to exercise discretion in traffic speed enforcement will not build a Berlin wall tomorrow, but what of the day after tomorrow?

Surely, it must be conceded at the outset that illegal or unauthorized conduct by public officials is a net evil, regardless of offsetting advantages. It is that, if only because it breeds general disrespect for law. It is also that because it leads to the unbridled and oppressive. So, too, it must be conceded that discretion—even legally permissible discretion—involves great hazard. It makes easy the arbitrary, the discriminatory, and the oppressive. It produces inequality of treatment. It offers a fertile bed

for corruption. It is conducive to the development of a police state—or, at least, a police-minded state. (Emphasis added.)

In a recent article the problem was succinctly stated: "The policeman's choice...if unwisely and needlessly expanded by inadequately conceived legislative formulations, has serious...potential for impairment of important values."

Professor Goldstein has recognized that the lack of opportunity for judicial supervision might allow unchecked police activity to lead to a police state. He recently wrote,

[T]he police should operate in an atmosphere which exhorts and commands them to invoke impartially all criminal laws.... If a criminal law is ill-advised, poorly defined, or too costly to enforce,...[there should be] pressures for legislative action. Responsibility for the enactment, amendment and repeal of the criminal laws will not, then, be abandoned to the whim of each police officer or department, but retained where it belongs in a democracy—with elected representatives.

The need of society for enforcement of the laws for general protection constantly must be balanced against the preservation of individual rights and freedoms, and for avoiding the evils of a police state. While many authors warn against the latter encroachments, police officials assert that the courts overbalance the scales in favor of the criminals by extending protections of individual rights far beyond any need for them.

It is common knowledge that police officers invoke typically broadly worded "vagrancy" statutes to detain persons of whom they suspect greater crimes, or to rid themselves of annoying or "undesirable" persons. Similarly, police officers often invoke little-enforced traffic laws to apprehend suspected criminals, "for a closer look." A recent Washington case curtailed that practice, but still the police press for even-greater latitude in enforcement. Current examples include proposals that will be submitted to the 1965 legislature, which would

30 Goldstein, Police Discretion Not to Invoke the Criminal Process: Low-Visibility Decisions in the Administration of Justice, 69 YALE L. J. 543, 586-87 (1960). See also, Goldstein, supra at 575, n. 66 and accompanying text.
31 Corning, supra note 12.
33 Corning, supra note 12.
allow police officers to institute random roadblocks and to administer alcohol-blood tests to any motorist who is apprehended for a traffic violation or who is involved in a traffic accident.\textsuperscript{35} Police actions and proposals of this nature supply the breeding ground for a police state, or at least for a police state atmosphere. It seems undesirable to afford another opportunity, in speed limit enforcement, to encourage this tendency.

In short, although the police departments may be commended for their objectives of making life more safe and secure, we should nonetheless jealously guard our freedoms lest their enthusiasm overcome and consume us. To do otherwise is to repeat the history of police rule everywhere.

Police legislation may violate the equal protection and/or due process clauses of the United States Constitution.

The Washington court held that a statute which granted county prosecuting attorneys the discretion to charge for either a felony or a misdemeanor in certain factual situations failed to meet the federal equal protection requirement.\textsuperscript{36} It is arguable that if a prosecutor, acting\textit{ pursuant} to a legislative command, denies the accused equal protection because he may select the severity of punishment, then a police officer may likewise violate equal protection when he determines,\textit{ contrary} to legislative command, whether certain conduct is criminal at all. (Actions of police officers constitute state action,\textsuperscript{37} even if they go beyond state-authorized action.\textsuperscript{38}) The Supreme Court spoke of a similar situation, and a parallel problem, in an early case:

Though the law itself be fair on its face and impartial in appearance, yet, if it is applied ... with an evil eye and an unequal hand, so as practically to make unjust and illegal discrimination between persons in similar circumstances, material to their rights, the denial of equal justice is still within the prohibition of the Constitution.\textsuperscript{39}

However, in more recent and more pertinent expressions, the Court has said unequal law enforcement will not violate equal protection

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\textsuperscript{35} The latter proposal is the so-called "implied consent" bill, which would condition the issuance of a driver's license upon the consent of the applicant to advance submission to such tests. It is designed to circumvent constitutional prohibitions that now require express consent at the instant the test is administered. \textit{Query: Would such a law be constitutional?} Consider, "The possession of a license to drive is a vested property right." Moore v. Mac Duff, 309 N.Y. 35, 38, 127 N.E.2d 741, 742-43 (1955).

\textsuperscript{36} \textit{In re} Olsen v. Delmore, 48 Wn.2d 545, 295 P.2d 324 (1956). The court also found a violation of the similar provisions of WASH. CONST. art. 1, § 12.


\textsuperscript{38} Screws v. United States, 325 U.S. 91 (1945).

\textsuperscript{39} Yick Wo v. Hopkins, 118 U.S. 356, 373-74 (1886).
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unless the discrimination is intentional and arbitrary, and perhaps only if it can be shown that the police do not intend to follow up the initial action with a general program of enforcement, obviously a difficult burden to sustain. Furthermore, the fact that other violators go unpunished does not produce a denial of equal protection, nor does mere laxity in enforcement. In Kotch v. Bd. of River Port Pilot Comm'rs, the Supreme Court indicated that enforcement determinations based on police manpower and financial limitations do not violate equal protection, so long as the classification devised is reasonable.

It seems that the courts, notably the Supreme Court, have diminished the effect of the equal protection clause in the area of police enforcement, and perhaps have forgotten that the aim of constitutional doctrines is "to assure responsible control over the scope and probable regularity of exercise of governmental force." Lost also is a recognition that too great a discretion conferred upon law enforcement officials,

[...]

An attack on the exercise of police discretion on the basis of due process promises a similar improbability of success. The Supreme Court has said that criminal laws violate the fourteenth amendment's due process requirement if they do not afford to the public a fair warning of what is prohibited. Mr. Justice Butler said,

No one may be required at the point of life, liberty or property to speculate as to the meaning of penal statutes. All are entitled to be informed as to what the State commands or forbids.

46 Ibid.
48 Id. at 453. See also Goldstein, supra note 30 at 547.
It could be argued that because the effective law is that which is established by the police, and is not that which is posted and of which fair notice is given, then the notice requirement is not met, and the accused speeder is deprived of due process. It appears that no court has passed on this precise question. The probable judicial response can be anticipated by examining the treatment that courts give to litigants who protest the invocation of an old and long unenforced statute. The court usually recites the ancient American rule that, "Only the legislature can abrogate a statute, even if it has long been in fact a dead letter." The expectable result, then, is that the court will hold that the law is that which is stated in the statutes, and that non-enforcement violates neither equal protection nor due process.

It seems, as suggested above, that such police action violates the spirit of the equal protection and due process provisions. Perhaps the more "liberal" attitude toward these provisions that has characterized the Court's most recent decisions (perhaps, in turn influenced by personnel changes on the Court) will next be felt in problems of police enforcement.

Negligence per se may furnish the basis for tort liability arising out of automobile accidents. Many courts have held that a driver who violates a traffic safety statute is guilty of negligence which bars his recovery, and which may render him liable to the other party. Will these courts listen to an argument that a speeding driver who nevertheless drove within the higher "police limits," was not negligent because he was not breaking the "effective" law? Would it not be fair to say that the police have determined that the complained of speed is not unsafe, and therefore that it cannot be per se negligent to drive at that speed?

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49 See excellent article on this point; Bonfield, supra note 42.
50 See id. at 390-93 for comprehensive study of the rule in other nations.
51 I SUTHERLAND, STATUTORY CONSTRUCTION § 2034 (3d ed. Horack 1943).
52 But cf., Poe v. Ullman, 367 U.S. 497 (1961), wherein the Supreme Court refused to decide the constitutionality of a Massachusetts anti-contraceptive statute because there had been no prosecution under it for several decades. The Court said that the claimant could not show interference with his constitutional rights because, in effect, he could not show a "law" that threatened them.
53 For a discussion of one important aspect of this recent attitude of the Court, see Morris, Poverty and Criminal Justice, 38 WASH. L. REV. 667 (1963).
54 The then Judge Cardozo, speaking of the failure of plaintiff's deceased to exhibit warning signals pursuant to a statutory command, said, "We think the... omission of the statutory signals is more than some evidence of negligence. It is negligence in itself." Martin v. Herzog, 228 N.Y. 164, 166, 126 N.E. 814, 815 (1920) (Emphasis in original). The court in Osborne v. McMasters, 40 Minn. 103, 41 N.W. 543 (1889), said, "[W]here a statute or municipal ordinance imposes upon any person a specific duty for the protection or benefit of others, if he neglects to perform that duty he is liable to those for whose protection or benefit it was imposed for any injuries of the character which the statute or ordinance was designed to prevent...."
speed? The personal injury court will encounter the same question that we formulated in considering disrespect for the law, police state potentialities and possible violations of equal protection and/or due process: "What is the law?" Is it what the police enforce and what the people probably think is the law, or is it the command of the legislature? The resolution of many personal injury claims will depend upon the answer to this question. This problem is probably less significant in Washington because our court holds that a speed limit violation makes the violator liable or bars his recovery only if there is a causal connection between the violation and the accident. ⁵⁵

As was suggested in the beginning, unreasonable and unenforceable legislative speed limits are the usual source of the discussed problems. Under these circumstances police officials present persuasive arguments in favor of the necessity of their exercise of discretion.

However, the answer appears to lie with legislative bodies. Their task is to accommodate the group interest in traffic safety to the individual interest in preservation of freedoms and to minimize the sacrifice of each of them. They must do two things. First, they must ascertain the speed limits that most effectively promote traffic safety, and then establish those limits. Second, they must insist upon police enforcement of the legislative enactments, and provide a means for checking periodically the police performance in this respect. With these two steps accomplished the police argument of justification derived from necessity disappears. Because there is no longer a need for police discretion to promote traffic safety, we need no longer tolerate any sacrifice of individual freedoms: There is no longer anything to balance in the scales against the interests of the individual.

It is usually not easy to secure such action from legislatures. ⁵⁶ However, both the Washington State Legislature and the Seattle City Council ⁵⁷ have recently reasserted their authority in the area of traffic laws and enforcement. ⁵⁸ It is important that the actions taken by each

⁵⁵ E.g., Mathers v. Stephens, 22 Wn.2d 364, 156 P.2d 227 (1945) (citing cases).
⁵⁶ See Beutel, Some Potentialities of Experimental Jurisprudence as a New Branch of Social Science (1957); O'Connell, Taming the Automobile, 58 NW. U. L. REV. 299 (1963); and U.S. DEP'T COMMERCE (Bureau of Public Roads) REPORT, supra note 9.
⁵⁷ This is not an attempt to discredit similar efforts by other Washington municipalities. Space limitations preclude an exhaustive survey of developments on the local level throughout the state.
⁵⁸ These efforts have been noticed in other quarters. The American Bar Association awarded Washington State one of its two 1963 citations for "significant progress in traffic court practices and procedures." for special achievement in promulgating a comprehensive set of uniform rules governing procedures in all trial courts of limited
of these legislative bodies have been based on a rational, scientific approach, and have not been characterized by hastily concocted statutes which were produced in an emotional response to a particular traffic tragedy. The former is the better approach; the latter is the usual approach. Because the legislative groups employed the "scientific" approach the resulting laws are probably more reasonable and more realistic, and should be enforced because they are good laws (heretofore this article has weighed the desirability of enforcing possibly bad laws simply because they are laws).

The 1961 Washington State Legislature established a "Joint Interim Committee" to study highway problems, and directed the committee to report and recommend to the 1963 legislature. Under the aegis of the committee a citizens advisory committee was created. Spokesmen from traffic safety organizations, from automobile clubs, from police departments and private citizens constituted the committee. Throughout the biennium the citizens advisory committee gathered data on the effects various changes in speed limits produced on traffic safety in other states, consulted with other experts, and compiled their information for a report to the legislature. The citizens advisory committee concluded, among other things, that traffic accidents could be reduced if speed limits were increased to seventy miles per hour on some of the new freeways. They recommended the increase to the legislature. The legislature carefully considered the report of the citizens advisory committee, and conducted public hearings on its proposals. Engineering data was also considered. The state patrol was consulted. Only after concluding these extensive deliberations did the legislature authorize the highway commission to increase the maximum speed limit to seventy miles per hour on certain freeways.

In 1963 the Seattle City Council enacted a comprehensive new traffic code. This enactment followed more than a year of intensive study jurisdiction and for taking steps to eliminate the fee justice system. Reported in Traffic Court Justice Vol. 4 No. 4, Oct. 1963 p. 5 col. 3.

An excellent book is devoted to the proof of these two propositions: Beutel, supra note 56.

Washington, supra note 12.  
Van Rooy, supra note 12.  
Ibid.  
Darlington, supra note 12.  
Ibid.

Washington, supra note 12.  
Ibid.  
Still, supra note 12.  
Ibid.

and consultation\textsuperscript{11} that was similar to the procedure that the legislature employed. The result was a complete modernization of the sometimes incomprehensible, sometimes inconsistent, provisions of the old municipal traffic code, and the emergence of a new code that is geared to the necessities of urban traffic regulation for the late twentieth century.

The legislature made a strong first step. The Seattle City Council established a sound framework. Yet, neither should sit back and conclude that the work is done. Perhaps the legislature could consider a basic reconstruction of its traffic laws,\textsuperscript{12} following the methodical pattern that it successfully established in its action on the freeway speed limits. The Seattle City Council, working through its delegated mechanisms, must remain alert to constantly changing traffic problems and patterns that accompany metropolitan expansion, and must be responsive to the needs as they arise.

Partially as a result of their recent actions, both the legislature and the city council are equipped to fulfill their responsibilities. The highway commission's engineering division compiles statistics on traffic speeds and traffic accidents and reports them and recommends to the legislature.\textsuperscript{13} The state patrol performs similar tasks.\textsuperscript{14} Seattle's traffic engineer maintains extremely detailed records of traffic accidents, traffic speeds, the effectiveness of regulatory devices and many other related aspects of traffic safety.\textsuperscript{15} He discloses his findings, and also forwards compilations provided by the police department, in a monthly newsletter that he circulates to all members of the city council and to other persons who express interest in traffic safety.\textsuperscript{16} Also, the advisory committees of each legislative body continue to operate under statutory authority.

The need for continuing legislative action exists both to promote traffic safety and to preserve our fundamental freedoms. The means for continuing action exists. Let us hope that the legislators continue to exercise their discretion so that there will be no occasion for the exercise of discretion by police authorities.

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\textsuperscript{11} Massart, \textit{supra} note 12.
\textsuperscript{12} RCW Title 46.
\textsuperscript{13} Still, \textit{supra} note 12.
\textsuperscript{14} Ranney, \textit{supra} note 12.
\textsuperscript{15} In 1963 more than 8,900 cars were speed-checked at 92 locations in Seattle. Traffic volume, congestion and average speed are continuously checked at 45 key locations. In addition, special speed and delay studies were conducted on six major arterial routes. Mitchell, \textit{supra} note 12.
\textsuperscript{16} Mitchell, \textit{supra} note 12.
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